417.

SUPREME COURT OF THE UNITED STATES.

No. 203.

THE UNITED STATES, APPELLANTS,

vs.

DIEGO OLIVERA ET AL.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 66—*Diego Olvera et al., claimants,* vs. *The United States, defendant—for the place named "Guadalupe."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-fourth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Diego Olvera et al., for the place named "Guadalupe," was presented, and ordered to be filed and docketed with No. 66, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *September* 11*th*, 1852.

In case No. 66, Diego Olvera and Teodoro Arellanes, for the place named "Guadalupe," the deposition of Pablo de la Guerra, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *Jan.* 6*th*, 1853.

In the same case, the deposition of Andres Pico, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *August* 14*th*, 1853.

Case No. 66, (Diego Olvera et al.,) called, submitted on briefs, on both sides, and taken under advisement.

SAN FRANCISCO, *December* 6, 1853.

In the same case, Commissioner Thompson Campbell delivered the opinion of the board confirming the claim.

(Vide page 29 of this Transcript.)

To the honorable Commissioners to settle private land claims in California.

The petitioners, Diego Olivera and Teodoro Arellanes, respectfully show:

That on the 8th day of March, A. D. 1837, the petitioners applied to the governor of California for a grant of the tract of land known by the name of Guadalupe, in the then jurisdiction of Santa Barbara and now county of San Louis Obispo; that their petition was referred by the governor on the 9th day of March, A. D. 1837, to the Ayuntamiento of Santa Barbara for their report thereon, which body reported in favor of the said petition on the 14th day of March, 1837; and on the 8th day of April, A. D. 1837, Juan B. Alvarado, governor of California, made a decree, granting to the petitioners the aforesaid tract of land, and directing its reference to the deputation of California for their opinion thereon; that on the return of the aforesaid documents to *to* the said Governor Alvarado for his action thereon, the said Juan B. Alvarado, governor of California, by virtue of authority in him vested, did, on the 21st day of March, A. D. 1840, grant by formal title to the petitioners the said tract of land called Guadalupe, with the limits set forth in the map accompanying the petition.

That on the 23d day of May, 1840, the said tract of land was duly surveyed and the juridical possession of it given by the proper authority to the petitioners; copies of which espediente is hereto annexed, marked A, with a translation marked B, and copies of the formal grant and map marked C, with a translation marked D, and a copy of the act of survey and juridical possession marked E, with a translation marked F.

That ever since the 8th day of April, A. D. 1837, the petitioners have been, and now are, in the quiet, peaceful and undisputed possession of the said tract of land.

That the said tract of land has not been surveyed by the U. S. surveyor general; but that it was surveyed by the proper authority at the time of giving the juridical possession of it; and the boundaries marked out, and that they are now well known.

The petitioner relies for confirmation of title upon the original papers, copies of which are hereto annexed, upon the minutes and documents in the archives now in the possession of the surveyor general, and upon such other and farther proofs as they may be advised are necessary.

Wherefore they pray the commissioners to confirm to them the aforesaid tract of land.

By their attorneys:

HALLECK, PEACHY & BILLINGS.

Filed in office, Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Pablo de la Guerra.

OFFICE OF THE CALIFORNIA LAND COMMISSION.

On this day, before Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant,

Diego Olvera et al., whose petition is No. 66 on the docket of the board, and was duly sworn, his evidence being given in English.

The land agent of the U. S. was present.

Questions propounded by counsel for claimants, and witness answers:

1st Question. What is your name, age and place of residence?

Answer. My name is Pablo de la Guerra; my age is about 33 years; I reside in Santa Barbara, and have lived in California all my life.

2nd Quest. Examine the papers before you, marked No. 3, and filed with this deposition, and say if the signatures are genuine, and the document genuine and original?

Answ. I am acquainted with the signatures of Juan B. Alvarado, Manuel Jimines, Antonio Olivera, Antonio Rodriguez and José Maria Valenzuela; their signatures to these documents are genuine, and to the best of my knowledge and belief the documents themselves are genuine and originals.

PABLO DE LA GUERRA,
U. S. Land Agent.

Sworn to and subscribed before me this 10th Sept., 1853.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office, Sept. 11th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Andres Pico.

SAN FRANCISCO, *Jan'y 6th*, 1853.

On this day, before Com'r Harry J. Thornton, came Andres Pico, a witness produced in behalf of the claimants, Diego Olivera and Teodoro Arellanes, petition No. 66, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

My name is Andres Pico, my age is forty-two years; I was born in California, and live in Los Angeles.

I know the rancho of "Guadalupe;" it is between Santa Barbara and San Luis Obispo; Teodoro Arrellanes and Diego Olivera have occupied this rancho with cattle, horses, corrals, sowings, and a house, since 1840, and I believe before that time.

ANDRES PICO.

U. S. law agent present.

Sworn to and subscribed before me this 6th of Jan'y, 1853.

HARRY J. THORNTON, *Com'r.*

Filed in office, Jan'y 6th, 1853.

GEO. FISHER, *Sec'y.*

1 S. D. K.

Espediente promovido por los Ciudadanos Diego Olivera y Teodoro Arellanes, en solicitud del parage nombrado "Guadalupe," 1837.

(138.)

2 S. D. K.

Ex'mo S'or Gobernador:

Los C.Cos. Diego Olivera y Teodoro Arellanes, ambos vecinos de esta poblacion ante V. E. respectivos amente como mas haya lugar en derecho, decimos: Que necesitando de un terreno pa. cultivar, y criar en el ganado de todas clases, que produzcan la subsistencia de nuestras familias, y hallandose un parage en las inmediaciones de la ex-mision de la Purisima, cuyo establecimiento no lo necesita pues se halla actualmente valdio, conocido con el nombre de Guadalupe, suplicamos a V. E. se sirva adjudicarnos lo en propiedad conforme á las leyes de colonizacion, de cuyo terreno acompanamos debidamente el diseño respectivo.

P. T. a V. E. suplicamos se sirva admitirnos en esta sumisa representacion, dispensando que vaya en papel comun por no haber en esta municipalidad del sellado correspondiente.

Santa Barba., Marzo 8, de 1837.

DIEGO OLIVERA.

A ruego del interesado.

JOSE A. DE LA GUERRA Y CARRILLO.

3 S. D. K.

STA. BARBARA, *Mzo.* 9, *de* 1837.

Informe el ayuntamiento de esta municipalidad si los interesados en esta instancia obtienen todos los requisitos necesarios pa. ser atendidos en su solicitud: Si el terreno que pretenden esta valdio si no pertenece á la propiedad particular de algun individuo pueblo o mision o si perteneciendo á alguna de estas ultimas se halla en estado de adjudicarse en colonizacion conforme á las leyes. Evacuadas estos informes volverá el expediente al gobo. pa. su resolucion.

ALVARADO.

Ex'mo S'or Ylustre Ayuntamiento:

La comision á quien V. S. se ha servido confiar para que dictamine sobre el espediente que forma la solicitud de Ciudo. Diego Olivera en pretension del paraje nombrado Guadalupe, en observancia del decreto del gobernio f'ha nueve del presente espone: que los interesados obtienen todos los requisitos legales para ser atendidos en su solicitud, que el terreno que solicitan es valdio, y en estado de adjudicarse en colonizacion, conforme á la ley de 18 de Agosto, de 1824, y el reglam'to de Nobre, de 1828; pues aunque se ha conocido por de la pertenencia de la ex-mision de la Purisima, y se haya á la vez valdio sin ocupacion necessaria, y por consiguiente en estado de adjudicarse conforme á las leyes citadas.

Los que representan son ciudadanos Mejicanos ameritados, tienen buena conducta y bienes con que poblarlo, por lo que se hacen acreedores por la ley y por las consideraciones del gobierno á quien representare. Por tanto ofrese la comision a la deliberacion de V. S. la siguiente proposition.

Puede el gobierno adjudicar en propiedad á los Ciudos. Diego Olivera y Teodoro Arellanes el paraje nombrado Guadalupe.

Sta. Barbara, Marzo 14, de 1837.

VALENTIN COTA,
PABLO VANEGA.
BENITO DIAZ, *S'rio.*

En sesion de hoy aprovó el Y. A. la proposicion anterior, acordando se bulba este espediente al gobierno para su resolucion.

Fha ut supra.

DIEGO OLIVERAS.
BENITO DIAZ, *S'rio.*

5 S. D. K.

SANTA BARB'A, *Abril* 8, *de* 1837.

Vista la peticion con que da principio este espediente, el informe del Y. Ayuntamiento de esta municipalidad, con todo lo demas que se tubo presente y ver convino; de conformidad con lo dispuesto pr. las leyes y reglam'tos de la materia se declaran á los Ciud'nos Diego Olivera y Teodoro Areyanes dueños en propiedad del terreno conocido con el nombre de Guadalupe, demarcado en el diseño que acompaño á su solicitud y bajo los linderos ql. en el se espresan, sugetandose á las condiciones establecidas en la ley de diez y ocho de Agosto, de ochocientos veinte cuatro y al reglam'to de veinte uno de Noviembre, de mil ochocientos veinte ocho, libresé es. despacho correspondiente tomese razon en el libro respectivo y remitase este espediente á la ex'ma deputacion pa. su debida aprobacion en cuyo cas'o los interesados, á quienes se hará saber este decreto, presentarán nuevam'te su titulo, pa. que se les revalide. Asi el So'r Dn. Juan B. Alvarado, gob'dor interino del Estado, y presid'te de la ecs'ma diputacion del mismo, lo decretó, mandó y firmó, de que doy fé.

[6 S. D. K.]

JUAN B. ALVARADO.
Lic'do COSME PEÑA,
S'rio del Despacho.

8 S. D. K.—Sello Tercero, Dos Reales.

Habilitado por la administracion de la Aduana Maritima del puerto de Monterey de la Alta California, para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

GUTIEREZ. ANGEL RAMIREZ.

Balga para los años de 1839 y 1840.

ALVARADO. ANTONIO MA. OSIO.

[L. S.] Ex'mo S'or :

Diego Olivera y Teodoro Areyanes vecinos del partido de Santa Barbara, ante V. E. respectuosamente hacemos presente: que habiendo V. E. tenido ha bien concedernos el paraje nombrado Guadalupe, previos los informes y demas formalidades, prevenidos en la ley de colonizacion nos hallamos hasta la f'ha, ocupando d'ho sitio, en donde tenemos fincado nuestra subsistencia, y nos dedicamos al cultivo y crias de ganado, como ha sido nuestra profesion, mas como á la concesion que V. E. se sirvais hacernos, estubo opuesta la ex'ma diputacion y el asunto deve dirigirse al supremo gob'no suplicamos se sirva mandar se reforme el titulo que debidamente acompaño, y que interinamente se nos dé posecion juridica para evitar cuestiones con los colindantes y poder con mas libertad dedicarnos á su fomento. Ex'mo S'or los representantes somos de una abanzada edad y la mayor parte de nuestros años los hemos empleado en el servicio de las armas, y por este motibo no dadamos de su justificacion que acredite á nuestra pretencion gracia que esperamos de su acreditada bondad, asi á las ciudadanos del departam'te que felicim'te gobierna.

[9 S. D. K.] DIEGO OLIVERA.

Monterey, Marzo 17, de 1840.

[*For map see original, between pages* 11 *and* 12.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents now on file, and forming part of the said archives in my office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this sixteenth day of February, A. D. 1852.

SAM'L D. KING,
Su'r Gen'l Cal.

Filed in office, Feb'y 24th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

To his Excellency the Governor:

The citizens Diego Olivera and Teodoro Arellanes, both residents of this town, before your excellency, in the manner pointed out by law, respectfully appear and say: That having necessity for a piece of land to cultivate and in which to breed cattle of all kinds, which may conduce to the subsistence of our families; and there being a place in the vicinity of the ex-mission of La Purisima, which that establishment does not require, since it is now vacant, known by the name of Guadalupe, we pray your excellency to be so good as to adjudicate it to us in fee, conformably to the laws of colonization; of which we accompany in due form the respective map.

Wherefore we pray your excellency to be so good as to receive this our representation, excusing its going on common paper, as there is none in the municipality of the corresponding stamp.

Santa Barbara, March 8th, 1837.

(Signed) DIEGO OLIVERA.

At the request of the party interested.

(Signed) JOSÉ A. DE LA GUERRA Y CARILLO.

SANTA BARBARA, *March 9th*, 1837.

The illustrious ayuntamiento of that municipality will report, if the parties interested in this proceeding have all the requisites necessary to entitle their petition to be attended to; if the land they ask for is vacant; if it belongs to the private property of any individual, pueblo, or mission; and if pertaining to any of the latter, if it is in a state to be adjudicated in colonization conformably to the laws. These reports being made, the espediente will be returned to the government for its decision.

(Signed) ALVARADO.

To the Illustrious Ayuntamiento:

The committee to whom your honorable body has seen fit to refer for report the petition of citizen Diego Olivera for the place called Guadalupe, in compliance with the decree of the Government of the 9th instant, report:

That the petitioners have the legal requisites to be attended to in their petition; that the land asked for is vacant, and in a state to be adjudicated in colonization, conformably to the law of August 18th, 1824, and the regulation of November, 1828; because, although it has been known as pertaining to the ex-mission of La Purisima, and in turn became vacant and without the necessary occupation, it is consequently in a state to be adjudicated conformably to the afore-mentioned laws.

The petitioners are Mexican citizens of merit, of good conduct, have property with which to occupy the land, and therefore deserving, from the law and from the consideration of the government, to which representation is made.

Wherefore the committee offer to your honorable body the following resolution:

The government may grant in full, to citizens Diego Olivera and Teodoro Arellanes, the place called Guadalupe.

Santa Barbara, March 14th, 1837.

(Signed) VALLENTIN COTA,
(Signed) PABLO VANEGAS.
(Signed) BENITO DIAS, *Secretary.*

In session of this day, the illustrious ayuntamiento approved the foregoing proposition, directing the espediente to be returned to the government for its decision.

Date as above.

(Signed) DIEGO OLIVERA.
(Signed) BENITO DIAS, *Secretary.*

SANTA BARBARA, *April 8th*, 1837.

Having seen the petition at the beginning of this espediente, the report of the illustrious ayuntamiento of this municipality, and all others presented and examined:

In conformity with what is laid down in the laws and regulations concerning this matter, citizens Diego Olivera and Teodoro Arellanes are declared owners in fee of the land known by the name of Guadalupe, marked out in the map which accompanies their petition, and within the boundaries *the boundaries* therein expressed; subject to the conditions established in the law of August 18, 1824, and the regulation of November 21st, 1828. Let the corresponding letter-patent issue, take note in the respective book, and remit this espediente to the Most Excellent Deputation for its due approbation, in which case the parties interested, who will be notified of this decree, will present their title again to be revalidated. Thus Don Juan B. Alvarado, Governor *ad interim* of the State, and President of the Most Excellent Deputation of the same, decreed, ordered, and signed, of which I certify.

(Signed) JUAN B. ALVARADO.
(Signed) LINCENCIATE COSIME PENA,
Secretary.

Stamp Third, Two Reales.

Provisionally authorized by the administration of the custom-house of the port of Monterey, in Upper California, for the years 1836 and 1837.

(Signed) GUTIERREZ.
(Signed) ANGEL RAMIREZ.

Good for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO M'A OSIO.

[Maritime Custom-House of Monterey.] Most Excellent Sir:

Diego Olivera and Teodora Arellanes, residents of the district of Santa Barbara, before your excellency, respectfully represent:

That your excellency having had the goodness to grant us the place called Guadalupe, the reports and other formalities provided for in the law of colonization having been previously taken, we have to the present date occupied the said place, where we hold established our means, and dedicated ourselves to agriculture and the breeding of cattle, as has been our profession; but as the grant which your excellency was pleased to make us was opposed to by the Most Excellent Deputation, and the subject was to be directed to the superior government, we beg your excellency to be pleased to order the title, which we submit in due form, to be made over again, and that in the meantime juridical possession be given to us, in order to avoid questions with the neighbors and to enable us to dedicate ourselves with more liberty to its improvement.

Most excellent sir: The petitioners are at an advanced age, and the greater part of our years have been employed in the military service, and for this reason we submit our claim to your justification; a favor which we hope from your known goodness to the citizens of the department, which is so happily governed.

Monterey, March 12, 1840.

(Signed) DIEGO OLIVERA.

Ex'ed l. R. P.

Filed in office, Feby. 24, 1853.

GEO. FISHER, *Sec'y.*

Document No. 3, annexed to the Deposition of Pablo de la Guerra.

Sello Primero, Seis Pesos.

Habilitado provisionalmente por la Aduana Maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTONIO MA. OSIO.

[L. s.] Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto los ciudadanos Diego Olivera y Teodoro Areyanes, han pretendido para su beneficio personal y el de sus familias el terreno conocido con el nombre de Guadalupe, colindante con la laguna immediata á las Lomas de Azufre y con el Serro de Lospe; practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos de la materia, usando de las facultades que me son concedidas á nombre de la nacion Mejicana, he venido en concederles el terreno mencionado declarandoles la propiedad de el por las presentes letras, entendiendose dicha concesion con entera conformedad ó las leyes á reserva de la aprobacion ó desaprobacion de la Ex'ma Junta Departamental, y bajo las condiciones siguientes:

1a. Los agraciados ni sus herederos podrán dividir ni enagenar el que se les adjudique; imponerle censo, vinculo, fianza, hipoteca ni otro gravamen aunque sea por causa piadosa ni pasarlo á manos muertas.

2a. Podran sercarlo sin perjudicar las travesias, caminos y servidumbres; lo disfrutarán libre y esclusivamente destinandolo al cultivo y uso que mejor les acomode.

3a. El juez respectivo les dara posecion legitima o juridica en virtud de este despacho, por el cual se demarcarán los linderos y pondran sus mohoneras.

4a. El terreno de que se les hace donacion es puramente el que se espresa en la solicitud de los interesados y se demarcaran en el diseño que corre agregado el espediente; y el juez que les posesione pasara aviso á este gobierno del numero de sitios que comprende. En consecuencia mando que sirviendoles de titulo el presente y teniendose por firme y validero, se tome razon en el libro que corresponde, y se entreque á los interesados para su resguardo y demas fines.

Dado en Monterey, á veinte y uno de Marzo, de mil ochocientos cuarenta.

JUAN B. ALVARADO.
MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acientos sobre adjudicacion de terrenos valdios a fe. 2.

JIMENO.

[*For map see original, between pages* 19 *and* 20.]

Sello Tercero, Dos Reales.

Habilitado por la administracion de la Aduana Maritima del puerto de Monterey, de la Alta California, para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

GUTIERREZ. ANGEL RAMIREZ.

Volga para los años 1839 y 1840.

ALVARADO. ANTONIO MA. OSIO.

[L. S.] S'or Juez de Paz del Partido de Santa Barbara:

Diego Olivera y Teodoro Arellanes, de esta vecinedad ante V. por el ocurso que en derecho haya lugar, decimos; que por la consecion que el gob'no de este departamento nos hizo del terreno conocido con el nombre de Guadalupe, como lo acredita el titulo que se nos expidio, tenemos por esta razon el derecho de pedir á V. la posecion juridica en virtud de espresarlo asi la condicion tercera de dicho titulo.

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P. T. a V. pedimos acceda á nuestra solicitud de lo que recibiremos justicia, &c.; juramos.

S'ta Barb'a, y Abril 8, de 1840.

Por si y á nombre del segundo.

DIEGO OLIVERA.

SANTA BARB'A, *Abril 8, de* 1840.

Vista la solicitud de los que representan el juzgado dispone q. p'a el dia 27 del procsimo Mayo, se pasará ó dar la posecion q. solicitan.

El ciudadano Ant'o Olivera, Juez de Paz de esta municipalidad, asi lo decreté, mandé y firmé.

ANT'O OLIVERA.

En el puerto de Santa Barbara, á los veinte y tres dias del mes de Mayo, del año de mil ochocientos cuarenta, amiente á la solicitud hecha por los Ciudadanos Diego Olivera y Teodoro Arellanes, á fin de que se les de la correspondiente posecion del sitio conocido con el nombre de Guadalupe, concedido por el gobierno de este departamento y habiendo la falta de un agrimensor q'l para efecto de las medidas correspondientes compareser p'a q. remida el enunciado terreno lo hijo yo el, el primer nombrado juez de paz Ciudadano Antonio Olivera, con total arreglo á las primeras medidas q. se han practicado cuyo diseño se agregará al espediente pasese, por mi y los testigos de asistencia al espresado sitio, y prosedase á dar la posecion indicada arreglandose al titulo q. se les ha conferido por el superior gobierno de este departamento, con fecha veinte y uno de Marzo, de mil ochocientos cuarenta.

Yo el espresado juez de este punto, asi lo decreté, mandé y firmé, con los testigos de mi asistencia, doy fé.

ANT'O OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSÉ MA. VALENZUELA.

En el rancho nombrado Guadalupe á los veinte y siete dias del mes de Mayo, de mil ochocientos cuarenta; el juez que subscribe habiendo hecho citacion de colindantes, comparecieron estos, siendo los ciudadanos José Ma. Valenzuela, por establecimiento de la Purisima y Franco. Quijada, como éncargado del rancho de Nipomo· les hize saver el objeto con que me habire condusido ha aquel paraje, y q. en este caso presentaron los documentos que respectivamente tubieren sobre propriedad de aquel terreno pues hib ı á remidirlo y poner en posecion de el á los ciudadanos Diego Olivera y Teodoro Arellanes, y no haviendo presentado documentos ningunos q'l impidiesen las medidas les diji q. hiba á proseder ha ellas: lo q. pongo por diligencia q. autoriso y firmo, con los testigos de mi asistencia, segun derecho.

ANTO. OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSE MA. VALENZUELA.

P. T. a V. pedimos acceda á nuestra solicitud de lo que recibiremos justicia, &c.; juramos.

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Por si y á nombre del segundo.

DIEGO OLIVERA.

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Vista la solicitud de los que representan el juzgado dispone q. p'a el dia 27 del procsimo Mayo, se pasará ó dar la posecion q. solicitan.

El ciudadano Ant'o Olivera, Juez de Paz de esta municipalidad, asi lo decreté, mandé y firmé.

ANT'O OLIVERA.

En el puerto de Santa Barbara, á los veinte y tres dias del mes de Mayo, del año de mil ochocientos cuarenta, amiente á la solicitud hecha por los Ciudadanos Diego Olivera y Teodoro Arellanes, á fin de que se les de la correspondiente posecion del sitio conocido con el nombre de Guadalupe, concedido por el gobierno de este departamento y habiendo la falta de un agrimensor q'l para efecto de las medidas correspondientes compareser p'a q. remida el enunciado terreno lo hijo yo el, el primer nombrado juez de paz Ciudadano Antonio Olivera, con total arreglo á las primeras medidas q. se han practicado cuyo diseño se agregará al espediente pasese, por mi y los testigos de asistencia al espresado sitio, y prosedase á dar la posecion indicada arreglandose al titulo q. se les ha conferido por el superior gobierno de este departamento, con fecha veinte y uno de Marzo, de mil ochocientos cuarenta.

Yo el espresado juez de este punto, asi lo decreté, mandé y firmé, con los testigos de mi asistencia, doy fé.

ANT'O OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSÉ MA. VALENZUELA.

En el rancho nombrado Guadalupe á los veinte y siete dias del mes de Mayo, de mil ochocientos cuarenta; el juez que subscribe habiendo hecho citacion de colindantes, comparecieron estos, siendo los ciudadanos José Ma. Valenzuela, por establecimiento de la Purisima y Franco. Quijada, como encargado del rancho de Nipomo: les hize saver el objeto con que me habire condusido ha aquel paraje, y q. en este caso presentaron los documentos que respectivamente tubieren sobre propriedad de aquel terreno pues hib á remidirlo y poner en posecion de el á los ciudadanos Diego Olivera y Teodoro Arellanes, y no haviendo presentado documentos ningunos q'l impidiesen las medidas les diji q. hiba á proseder ha ellas: lo q. pongo por diligencia q. autoriso y firmo, con los testigos de mi asistencia, segun derecho.

ANTO. OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSE MA. VALENZUELA.

En el referido lugar á los veinte y ocho dias del mismo mes y año, yo el propio juez para la practica de estas diligencias, nombré dos oficiales medidores y dos cordeleros, á quienes les hize saber su nombramiento, el q. aseptaron bajo juramento q. otorgaron ofreciendo desempeñar fielmente su encargo: lo q. autorize y firmé, con los testigos de mi asistencia, segun derecho. ANTO. OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSE MA. VALENZUELA.

En el mismo dia, mes y año, en el paraje nombrado la boca del arroyo del Oso Flaco, á efecto de verificar las remedidas y posecion que corresponde á los ciudadanos Diego Olivera y Teodoro Arellanes del sitio nombrado Guadalupe, previos todos los requisitos de ley y estando, ante mi, los testigos de asistencia, los oficiales medidores los cordeleros, y yo el juez Ciudadano Antonio Olivera, hize medir un cordel q. contenia cincuenta varas el cual fue ecsaminado y reconocido y asiendo á sus estremos unos saucos de madera y por mi disposicion se tiro el cordel rumbo al este comenzando des de los meganos q. hay en dicho lugar en donde se clabo un palo en señal de mohonera y habiendose medido dos y media leguas remató en el camino q'l sube para la mesa de Nipomo, en donde se clabo un palo en señal de mohonera, en seguida y por mi disposicion se tiro el cordel por sobre el llano de lo largo rumbo al sur y haviendose medido tres leguas remato en lo alto de las Lomas del Azufre en cuyo lugar esta un encino el mas visible y sirvió de mohonera. En seguida y por mi disposicion se tiro el cordel sobre las mismas lomas rumbo al norueste, y habiendose medido legua y cuarto remato en la orilla del mar en donde esta un morrito, q'l sirvio de mohonera. Ymmediatamente y por mi disposicion se tiro el cordel por sobre una Cañada rumbo al norte, y haviendose medido dos y medio leguas remato la medida, en donde se comenzo y se conclyeron las remedidas de este sitio ha satisfaccion de los interesados; lo q. pongo por diligencia q. autorizo y firmo, con los testigos indicados.

ANTONIO OLIVERA.

Asistencia: ANTONIO RODRIGUEZ.
Asistencia: JOSE MA. VALENZUELA.

Filed in office, Sept. 11th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Stamp First, Six Dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Sg'd) ANTONIO M'A OSIO.

(Sg'd) ALVARADO.

"D."—Translation of Title.

[Maritime Custom-house of Monterey.] Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas, citizens Diego Olivera and Teodoro Arrellanes have, for

their own personal benefit and that of their families, petitioned for the land known by the name of "Guadalupe," bounded by the laguna, which is near the hills of Azufre, and with the hill of Jaspe, the necessary measures and examinations having previously been made, as required by laws and regulations relative to this matter, using the powers which are conferred upon me in the name of the Mexican nation, I have granted them the above-mentioned land, declaring to them the ownership of it by these presents; said grant being understood to be in entire conformity with the laws, subject to the approval or disapproval of the most excellent Departmental Junta, and under the following conditions, viz.:

1. Neither the grantees nor their heirs can divide or alienate that which is granted them; subject it to any tax, entail, pledge, mortgage or any other incumbrance, even for pious purposes, nor convey it in mortmain.

2. They may enclose it without prejudice to the roads, cross-roads and servitudes, and enjoy it freely and exclusively, making such use and cultivation of it as they may see fit.

3. The proper magistrate will give them legal or juridical possession, in virtue of this order, by whom the boundaries shall be marked out and the bounds placed.

4. The land which is granted in donation is only that which is described in the petition of the persons interested, and marked out on the map which goes with the espediente, and the magistrate who may put them in possession will inform this government of the number of sitios it embraces.

In consequence I order, that serving them for title, these presents, and being held as firm and valid, note be taken of them in the corresponding book, and they be delivered to the interested persons for their security and other purposes.

Given at Monterey on the twenty-first of March, one thousand eight hundred and forty.

(Signed) JUAN B. ALVARADO.

(Signed) MANUEL JIMENO,
Secretary.

Note has been taken of this order in the book of entries of grants of vacant lands, at page 2.

(Signed) JIMENO.
Ex'd l. R. P.

Filed in office, Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Stamp Third, Two Reales.

Authorized by the administration of the maritime custom-house of the port of Monterey in Upper California, for the years one thousand

eight hundred and thirty-six, and one thousand eight hundred and thirty-seven.

(Signed) ANGEL RAMIREZ.
(Signed) GUTIERREZ.

Good for the years 1839 and 1840.

(Signed) ANTONIO MA. OSIO.
(Signed) ALVARADO.

"F."—*Translation of Survey and Possession.*

[Maritime Custom-house of Monterey.] To the Justice of the Peace of the Partido of Santa Barbara:

Diego Olivera and Teodoro Arellanes, of this vicinity, appear before you and represent: That by the grant which the government of this department made them of the land known by the name of Guadalupe, as shown by the title which was given them, they have a right to ask of you the juridical possession, in virtue of its being so required by the third condition of said title. They, therefore, pray you to grant their request, by which they will receive justice, &c.

They swear (in the required form.) Santa Barbara, April 8th, 1840. For himself and in the name of the second,

(Signed) DIEGO OLIVERA.

SANTA BARBARA, *April 8th*, 1840.

Having seen what is represented in the request, the court directed that on the 27th of May, prox., the possession be given which is requested. Citizen Antonio Olivera, justice of the peace of this municipality, thus decreed, ordered and signed.

(Signed) AMBROSIO OLIVERA.

In the port of Santa Barbara, on the 23rd day of May, in the year one thousand eight hundred and forty, in compliance with the request of citizens Diego Olivera and Teodoro Arellanes, that the corresponding possession might be given them of the place known by the name of Guadalupe, granted by the government of this department, for want of a surveyor who should be present to measure the aforesaid land, I, the first justice of the peace, did so with entire conformity to the measurements previously made, the map of which is annexed to the espediente; I and the assisting witnesses will proceed to the aforesaid place and give the possession referred to, conforming to the title which has been given them by the superior government of this department.

Dated the twenty-first of March, one thousand eight hundred and forty.

I, the aforesaid magistrate of this place, thus decreed, ordered and signed, with my assisting witnesses; I certify.

(Signed) ANTONIO OLIVERA.
(Signed) ANTONIO RODRIGUEZ, } Assisting witnesses.
(Signed) JOSÉ MA. VALENZUELA, }

In the rancho called Guadalupe, on the twenty-seventh day of the month of May, one thousand eight hundred and forty, I, the magistrate who subscribes, having summoned the colindantes, co-terminous neighbors, citizens José Maria Valenzuela, for the establishment of the Purisima, and Francisco Quijada, as in charge of the rancho of Mipomo, appeared, and I let them know the object with which I had come to that place, and that they should present the documents which they might have relative to the ownership of that land, for I was going to measure it and put in possession of it the citizens Diego Olivera and Teodoro Arellanes; and nothing having been presented which could hinder the measurements, I said that I was going to commence them, and I made official note of it, which I authenticate and sign with my assisting witnesses, according to law.

(Signed) ANTONIO OLIVERA.
(Signed) ANTONIO RODRIGUEZ, } Assisting witnesses.
(Signed) JOSÉ MA. VALENZUELA, }

In the aforesaid place, on the twenty-third day of the same month and year, I, the proper magistrate for the performance of these official acts, appointed two measurers and two rope-bearers, and I informed them of their appointment, which they accepted, offering under oath to discharge faithfully the duties of their office, which I authenticate and sign with the assisting witnesses, according to law.

(Signed) ANTONIO OLIVERA.

Assisting witnesses:
(Signed) AMBROSIO RODRIGUEZ.
(Signed) JOSE MA. VALENZUELA.

On the same day, month, and year, being in the place called the mouth of the Arroyo del Oso Flaco, for the purpose of verifying the re-measurements and possession, which corresponds to citizens Diego Oliveras and Teodoro Arellanes, of the place called Guadalupe, all the legal requisites having been previously complied with, and being present, the assisting witnesses, the measurers, the rope-bearers, and I, the magistrate, citizen Antonio Olivera, I caused to be measured a cord which contained fifty varas, which was examined and recognised, and staves fastened to its extremities; then by my direction the cordel was drawn east from the medanos (meadows) sand banks, which are at said place, where a stake was written as a bound to the road which ascends to the mesa de Mipomo, distant two and a half leagues, and a stake was driven as a bound; then also by my order the cordel was drawn over the Llano de la Larga, in a southerly direction, to the high part of the Lomas de Azufre, where is an oak the most easily distinguished, which served as a bound, distant three leagues; immediately afterwards the cordel was drawn over the same hills northwesterly to the sea-shore, where is a little bluff, "Merrito," which served as a bound, distant one league and a quarter; immediately, and by my order, the cordel was drawn northerly over a cañada to the place of beginning, distant two

and a half leagues; and thus the measurements of this place were finished to the satisfaction of the parties interested. And I make official note of it, which I authenticate and sign with the aforesaid witnesses.

(Signed) AMBROSIO OLIVERA.

Assisting witnesses:

(Sgd.) ANTONIO RODRIGUEZ.
(Sgd.) MA. VALENZUELA.

Ex'd l. R. P.

Filed in office, Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Opinion.

DIEGO OLIVERA vs. THE UNITED STATES. } "Guadalupe" by metes and bounds.

The papers on file in this case show that the claimant, by their petition bearing date March 8th, 1837, solicited of Governor Alvarado a grant of a certain tract of land known by the name of "Guadalupe" on the 8th day of April, A. D. 1837. Governor Alvarado having received a favorable report from the Ayuntamiento, made his concession of the land called Guadalupe, with the boundaries as they were described in the map which accompanied the said petition. It also appears that on the 12th of March, 1840, the said claimants presented another petition to the governor, in which they represent that the place called Guadalupe, which had been previously granted to them, they had continued to occupy up to that time, dedicating themselves to agriculture and the breeding of cattle; and they further state, that the grant which they had obtained had been opposed by the deputation, and that the same was to be directed to the superior government; they therefore prayed that their title, which they then submitted, be made "over again," and that in the mean time juridical possession of the premises should be given to them.

On the 21st day of March, 1840, Governor Alvarado issued to the said parties a title in form, with the usual conditions, that the parties were not required to build a house within a year. The fourth condition attached to the grant is in the following words, to wit: "The land which is granted in donation is only that which is described in the petition of the persons interested and marked out on the map, which goes with the espediente, and the magistrate, who may put them in possession, will inform the Government of the number of sitios it embraces."

On the 23d day of May, A. D. 1840, the land was judicially measured, and the judicial possession duly given to the parties. All the foregoing papers and documents are satisfactorily proved to be genuine. It is proved by the deposition of Andres Pico, that Teodoro Arellanes and Diego Olivera had occupied the premises in question, with cattle, horses, corrals, sowings, and a house, since the year 1840, and, as he

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believed, before that time. It is apparent from the statement contained in the petition of the claimants, which bears date the 12th of March, 1840, that the deputation, instead of approving the first concession made by the governor, as the claimants have insisted in their brief was the case, absolutely refused their approval, and directed that the same should be forwarded to the superior government for approval. This course was in conformity with the of the regulations of 1828, but I do not consider that the refusal of the deputation to confirm so vitiated or nullified the grant that it ceased to be a legal basis upon which equities could rest, that would be binding upon the conscience of the Mexican government; but if the supreme government of Mexico had also refused their confirmation, the question would have presented itself in a very different aspect.

The parties have not seen fit to introduce in evidence the record of proceedings had before the deputation, consequently the statement made by the petitioners, as above referred to, is the only evidence which affords any information as to what the precise action of the deputation was upon the subject. Whether the espediente was ever forwarded to the supreme government, or whether that appointment acted upon the grant, are altogether unexplained. The land was sought for the purpose of agriculture and the breeding of cattle—the only two objects upon which the governor was authorized to make grants.

The evidence shows that the land granted was devoted to both objects, and that the parties occupied it from the date of the first grant. The object of the law, which was settlement and cultivation, was, I think, fully carried out in the case, as is made evident from the deposition of Pico, and as well as from other papers on file in the cause. The question of boundary presents some difficulty, but as the grant is one by metes and bounds, and is intended by express terms to embrace all the lands within the boundaries, as expressed on the map referred to by the governor in his first concession, I think, with the aid of the calls contained in the record of juridical measurement, the officer will be able to trace the boundaries as they are delineated on the map.

The claim is therefore confirmed.

Filed in office, Dec'r 6, 1853.

GEO. FISHER, *Sec'y*.

Decree.

DIEGO OLIVERA, TEODORO ARELLANES,
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission, that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The lands of which confirmation are hereby made are known by the name of "Guadalupe," and are the same upon which Diego Olivera

and Teodoro Arellanes now reside, and bounded and described as follows, to wit: Beginning at the megonos, or at the place called the mouth of arroyo del Osio Flaco, and running east the distance of two and a half leagues to the road, which ascends to the mesa de Nipomo, where there is a stake; thence running over Hono de la Lorga in a southerly direction the distance of three leagues to the high part of the Lomas de Azufre, to an oak tree, the most easterly distinguished; thence running over the same hills in a northwesterly direction the distance of one league and a quarter to the sea-shore, where there is "Morritas;" thence running over a cañada the distance of two and a half leagues to the place of beginning.

Reference for further description to be had to a map, which is a part of document marked (A), and filed in this case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, Dec. 6th, 1853.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of California.

I, Geo. Fisher, secretary to the Board of Commissioners to ascertain and settle private land claims in the State of California, do hereby certify the foregoing thirty-three pages, numbered from 1 to 33, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 66 on the docket of the said board, wherein Diego Olvera et al. are the claimants, against the United States, for the place known by the name of "Guadalupe."

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty second day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[Priv. seal.]

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, both inclusive, contain a full, true and correct copy of transcript No. 66, filed in this office, wherein

Diego Olivera et al. are the appellees, and The United States are appellants, for Guadalupe.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Los Angeles, California, this 28th [SEAL.] day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

DIEGO OLIVERA et al., appellees, ads. THE UNITED STATES, appellant. } Docket No. 39.—Transcript No. 66.

Be it remembered, that on the 26th day of August, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Diego Olivera et al. is the claimant against the United States, for the place named Guadalupe, was received and filed and docketed with No. 39, and is as follows, to wit:

(Vide page 1.)

LOS ANGELES, *Jan.* 10*th*, 1855.

In case No. 39, Diego Olvera et al., for Guadalupe, the notice of appeal from the Attorney General was filed.

(Vide page 3.)

LOS ANGELES, *Aug.* 13*th*, 1855.

In same case, the petition of the United States for review was filed.

(Vide page 3.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept.* 24*th*, 1855.

In same case, the answer of the appellees was filed.

(Vide page 11.)

LOS ANGELES, *Sept.* 24*th*, 1855.

In same case, the opinion of the court was delivered and the following decree entered:

(Vide page 12.)

Los Angeles, *Oct. 18th*, 1855.

In same case, the order of appeal, on motion of P. Ord, U. S. Attorney, was filed.

(Vide page 14.)

Notice of Appeal.

Office of the Attorney General of the U. States,
Washington, *30th November*, 1854.

Diego Olivera et al.
vs.
The United States. } No. 66.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

(Signed) C. CUSHING,
Attorney General.

Filed January 10th, 1855.
(Signed) C. E. CARR, *Cl'k.*

In the District Court of the United States for the southern district of California.

Los Angeles county, *State of California.*

Diego Olivera et al.
vs.
The United States. } No. 39.—Transcript No. 66.

Petition of United States for Review.

To the honorable Isaac S. K. Ogier, judge of the District Court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 24th day of February, 1852, Diego Olivera and Teodoro Arellanes presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called Guadalupe, in the county of San Luis Obispo, in the words and figures following, viz:

The petitioners, Diego Olivera and Teodoro Arellanes, respectfully show:

"That on the 8th day of March, A. D. 1837, the petitioners applied

to the governor of California for a grant of the tract of land known by the name of Guadalupe, in the then jurisdiction of Santa Barbara and now county of San Luis Obispo. That their petition was referred by the governor on the 9th day of March, A. D. 1837, to the ayuntamiento of St. Barbara for their report thereon, which body reported in favor of the said petition on the 14th day of March, 1837; and on the 8th day of April, A. D. 1837, Juan B. Alvarado, governor of California, made a decree granting to the petitioners the aforesaid tract of land, and directing its reference to the Deputation of California for their opinion thereon; that, on the return of the aforesaid documents to the said Governor Alvarado for his action thereon, the said Juan B. Alvarado, governor of California, by virtue of authority in him vested, did, on the 21st day of March, A. D. 1840, grant, by formal title to the petitioners, the said tract of land called Guadalupe, with the limits set forth in the map accompanying the petition.

"That, on the 23d day of May, 1840, the said tract of land was duly surveyed and the juridical possession of it given by the proper authority to the petitioners. Copies of which espediente is hereby annexed, marked A, with a translation marked B, and copies of the formal grant and map marked C, with a translation marked D, and a copy of the act of survey and juridical possession, marked E, with a translation marked F.

"That ever since the 8th day of April, A. D. 1837, the petitioners have been and now are in the quiet, peaceful, and undisputed possession of the said tract of land.

"That the said tract of land has not been surveyed by the U. S. surveyor general; but that it was surveyed by the proper authority at the time of giving the juridical possession of it, and the boundaries marked out, and that they are now well known.

"The petitioner relies for confirmation of title upon the original papers, copies of which are hereto annexed; upon the minutes and documents in the archives, now in the possession of the surveyor general; and upon such other and further proofs as they may be advised are necessary.

"Wherefore, they pray the commissioners to confirm to them the aforesaid tract of land.

"Your petitioners further represent, that thereafter, to wit, on the 6th day of December, A. D. 1853, the said commissioners confirmed by final decree the said claim of the said Diego Olivera and Teodoro Arellanes, in the words and figures following, to wit:

"In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid; and it is therefore decreed that the same be confirmed.

"The lands, of which confirmation are hereby made, are known by the name of Guadalupe, and are the same upon which Diego Olivera and Teodoro Arellanes now reside, and bounded and described as follows, to wit:

"Beginning at the Wegonus, or at the place called the mouth of

arroyo del Osio Floco, and running east, the distance of two and a half leagues, to the road which ascends to the Mesa de Nipomo, where there is a stake; thence, running over Hono de la Lorga in a southerly direction, the distance of three leagues, to the high part of the Lomas de Asuefre, to an oak tree, the most easterly distinguished; thence running over the same hills in a northwesterly direction, the distance of one league and a quarter, to the sea-shore, where there is 'Morritas;' thence running over a cañada the distance of two and a half leagues, to the place of beginning.

"Reference, for further description, to be had to a map, which is a part of Document marked (A), and filed in this case.

"ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
"*Commissioners.*

"Filed in this office, Dec. 6th, 1853.

"GEO. FISHER, *Sec'y.*"

That thereafter, to wit, on the 26th day of August, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 39, (Transcript No. 66;) reference to which it is prayed may be had, and made a part of this petition.

That on the 18th day of August, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause (No. 66), and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal in said cause of Diego Olivera et al. vs. The United States, from the decision of the said commissioners to ascertain and settle the private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land, claimed as aforesaid, is within the jurisdiction of the honorable court.

And your petitioner further represents, and insists that the said decree of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now in appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid, and the said decree erroneous, on the following grounds:

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimants to said commissioners, of said date; and he further denies that the said claimant has shown any or sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Governor Alvarado was made in violence of the 4th article of the Colonization law of Mexico, of the 18th of August, A. D. 1824, in this—that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast; and there is no evidence shown by claimant that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California lying within ten leagues of the sea-coast.

And it is denied that such previous consent of said supreme general executive power of Mexico, in such cases, was ever had.

III. That at the date of the said alleged grant the said land, claimed as aforesaid, was occupied and in the possession of the missions of the Territory of Upper California, and it was held and occupied particularly by the mission of La Purissima; and there were valuable improvements thereon, belonging to said mission; and the said land could not therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st of November, A. D. 1828.

V. That the said alleged grant of land of said Juan B. Alvarado, of the date of 21st March, A. D. 1840, does not show the extent of or sufficiently describe the land claimed, so that it can be identified and surveyed; and it is vague and uncertain.

VI. That the said alleged grant of said date does not contain the conditions requiring the alleged grantees to cultivate or occupy that said land within a proportionate time; and the further condition, that if it is not so cultivated or occupied, the grant of the land should remain void, as required by law.

VII. That the alleged decree of said governor, granting said land to said claimants, dated 8th April, 1837, and referred to the deputation of California by said governor, was opposed and not approved by said deputation.

VIII. That there is no evidence that said alleged decree of said governor for said land, of said date, opposed and not approved by said deputation, as aforesaid, was ever reported to, or approved by the supreme government of Mexico, as required by law.

IX. That the said Governor Alvarado had no lawful authority to make and deliver to said claimants, the alleged formal grant of the said date of the 21st of March, 1840, until after the said decree of the said date of the 8th of April, 1837, had been approved by said deputation or the said supreme government of Mexico.

X. That Antonio Olivera, pretending to act as justice of the peace of Santa Barbara, had no lawful authority to survey and give juridical possession of the said land on the 23d May, 1840, as alleged, in virtue of the said alleged grant of said Juan B. Alvarado.

XI. That the said pretended juridical acts of survey and possession by said Olivera, of said date, were not made in conformity with the said alleged grant and the map referred to therein, nor according to the ordinance or law, and they are vague and indefinite.

XII. That there is no evidence that the said Antonio Olivera was justice of the peace of Santa Barbara on or about the said 23rd of May, 1840, and that he then had lawful authority to make the survey and give juridical possession to said claimants of said land; and it is denied that he was justice of the peace of said place at said time, with lawful authority to perform said acts of survey and possession of said land.

XIII. That there is no sufficient evidence that the said claimants ever cultivated or occupied the said land within one year, or a reasonable time after the date of the said alleged grant.

And no sufficient proof having been made by said claimants of the allegations of their said petition, or in support of their said claim, filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said commissioners, upon the grounds aforesaid.

And the said claimants having no valid right or title, derived from the Spanish or Mexican government, to the said land claimed by them, as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to, the said United States, by virtue of the treaty of peace, friendship, limits, and settlement, with the republic of Mexico, dated at the city of Gaudalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said Pacificus Ord, attorney of the U. States for the southern district of California, for and in behalf of the United States, by reason of the promises, and in pursuance of the act "of Congress, entitled an act to ascertain and settle the private land claims in the State of California;" approved March 3d, 1851, and the laws and statutes in such cases made and provided, prays that the said Diego Olivera and Teodoro Arellanes may be served with copies of this petition; and that the honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of the said Diego Olivera and Teodoro Arellanes, for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid.

And all such other orders, judgments, or decrees, as may be just, with costs, and general relief.

(Sig'd) P. ORD,
Attorney of the United States
for the southern district of Calif'a.

Filed Aug't 13th, 1855.
(Sig'd) C. E. CARR, *Clk.*

In the United States District Court for the southern district of California.

THE UNITED STATES, appellants,
vs.
TEODORO ARRELLANES and DIEGO OLIVERA, appellees.
} Answer of Appellees.

Answer.

Teodoro Arrellanes and Diego Olivera, appellees, appear by their attorneys, and for answer to the petition of the United States, filed herein, say: That their title to the land called "Guadalupe," as set forth and described in their petition to the United States land commissioners, and in the documentary and other evidence filed in this case, is a good and valid title; and they pray this honorable court to affirm the decision of the board of commissioners, and to decree their title to be valid.

(Sig'd) HALLECK, PEACHY, & BILLINGS,
Attys. for Appellees.

Los Angeles, Sept. 22, 1855.

Filed Sept. 24th, 1855.
(Sig'd) C. E. CARR, *Clk.*

District Court United States for the southern district of California.

DIEGO OLIVERA and TEODORO ARRELLANES, appellees,
ads.
THE UNITED STATES, appellants.
} No. 39.—Guadalupe.

Decree.

This cause coming on to be heard before a stated term of this court, on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3d of March, 1851, on the transcript of the proceedings and decision of the said commissioners, and on the papers and evidence on which said decision was founded, and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the claim of the said appellee is a valid claim, and that said claim is hereby confirmed to a certain tract of land known by the name of "Guadalupe," being the same land on which the appellees, Diego Olivera and Teodoro Arrellanes, now reside. For particular description of said land reference will be had to the map and judicial record of possession, of file in the transcript of the record in this case.

(Sig'd) M. HALL McALLISTER,
Judge Circuit Court U. S. for the districts of California.

Filed Sept. 25th, 1855.
(Signed) C. E. CARR, *Clk.*